



# PUBLIC NOTICE

Federal Communications Commission  
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DA 06-134

Released: January 23, 2006

**DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL  
OF NEW EDGE NETWORK, INC., D/B/A NEW EDGE NETWORKS  
TO EARTHLINK, INC.**

**STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 06-15**

**Comments Due: February 6, 2006**

**Reply Comments Due: February 13, 2006**

On January 4, 2006, New Edge Network, Inc., d/b/a New Edge Networks ("New Edge") and EarthLink, Inc. ("EarthLink") (collectively, "Applicants"), filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,<sup>1</sup> for the transfer of control of New Edge to EarthLink.<sup>2</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment under sections 63.03(b)(1)(ii) and 63.03(b)(2)(i) of the Commission's rules. With respect to section 63.03(b)(1)(ii), Applicants assert that EarthLink is not a telecommunications provider.<sup>3</sup> With respect to section 63.03(b)(2)(i), Applicants aver that the proposed transaction would result in: (1) EarthLink having a market share in the interstate, interexchange market of less than 10%; (2) EarthLink providing competitive services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and (3) neither of the Applicants is dominant with respect to any service.<sup>4</sup>

<sup>1</sup> 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> Counsel for Earthlink filed an amendment to the Application on January 17, 2006. Applicants are also filing an application for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

<sup>3</sup> 47 C.F.R. § 63.03(b)(1)(ii).

<sup>4</sup> 47 C.F.R. § 63.03(b)(2)(i).

New Edge, a Delaware corporation, is a national provider of secure multi-site managed data networks and dedicated Internet access. New Edge was originally incorporated as Access21 Corp. and later changed its name.

EarthLink, a Delaware corporation, is primarily an Internet service provider, providing nationwide Internet access and related value-added services to individual and business customers. EarthLink does not provide telecommunications services. EarthLink is a publicly-held company. Barclays PLC (including its affiliates), a publicly-traded bank of the United Kingdom, holds approximately 11% of the total equity of EarthLink.

Pursuant to an Agreement and Plan of Merger executed on December 12, 2005, by New Edge Holding Company ("New Edge Holding"), New Edge Merger Corporation ("MergerCo") and EarthLink, MergerCo, a wholly owned subsidiary of EarthLink, will merge with New Edge Holding, the parent of New Edge, with New Edge Holding continuing as the surviving corporation. After the proposed transaction is effected, New Edge will continue to operate in substantially the same manner, as an independent company and as a wholly owned subsidiary of New Edge Holding, which in turn will be a wholly owned subsidiary of EarthLink. Upon completion of the proposed merger, EarthLink will control New Edge through the ownership of 100% of the outstanding common stock of New Edge Holding. Thus, after the proposed transaction, New Edge will have a different capital structure and a new controlling stockholder.

Applicants state that the proposed transaction is in the public interest because: (1) it will increase competition in Tier 2 and 3 small and medium enterprises and residential U.S. markets; (2) it will be essentially transparent to customers of New Edge; and (3) New Edge will continue to provide the same service at the same rates, terms, and conditions.

### **GENERAL INFORMATION**

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before February 6, 2006 and reply comments on or before February 13, 2006.**<sup>5</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31<sup>st</sup> day after the date of this notice.<sup>6</sup> Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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<sup>5</sup> See 47 C.F.R. § 63.03(a).

<sup>6</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

**You may submit comments, identified by the above noted docket number, by any of the following methods:**

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

**In addition, one copy of each pleading must be sent to each of the following:**

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, [www.bcpiweb.com](http://www.bcpiweb.com); phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; email: [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);
- (3) Adam Kirschenbaum, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C211, Washington, D.C. 20554; e-mail: [adam.kirschenbaum@fcc.gov](mailto:adam.kirschenbaum@fcc.gov);
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: [susan.o'connell@fcc.gov](mailto:susan.o'connell@fcc.gov); and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: [james.bird@fcc.gov](mailto:james.bird@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail [www.bcpiweb.com](http://www.bcpiweb.com).

For further information, please contact Tracey Wilson-Parker at (202) 418-1394, or Adam Kirschenbaum at (202) 418-7280.

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